

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5935 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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PATEL JIVABHAI LAXMANBHAI

Versus

SOLANKI GAFURBHAI OGADBHAI

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Appearance:

MR SP SEN for Petitioner

MR BB NAIK for Respondent No. 1

None present for Respondent No. 2

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CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 24/07/97

ORAL JUDGEMENT

1. This petition is directed by the petitioner against the order of the appellate authority, Gujarat Rural Debtors Relief Act and District Registrar, Cooperative Societies (Rural) Ahmedabad dated 5-11-1984 in Appeal No.599 confirming thereunder the order dated 27-6-1984 passed in Case No.1022 by the Debt Settlement Officer.

2. The only contention raised by the learned counsel for the petitioner is that it was a case of mortgage of the land by the debtor-respondent to the creditor-petitioner and the debtor filed a suit for redemption of mortgage which has been decreed by the civil court and in pursuance of the decree, an amount has been paid by the judgment debtor to the petitioner and the possession of the land has been delivered by him to the respondent. Hence, the Debt Settlement Officer has no jurisdiction in the matter under the provisions of Gujarat Rural Debtors Relief Act, 1976 (hereinafter referred to as "the Act, 1976").

3. On the other hand, the counsel for the respondent contended that both the authorities have rightly decided the matter in favour of the respondent, and as such, this Court should not interfere in the matter. It has further been contended that this special civil application has been filed by the petitioner under Article 227 of the Constitution and when the orders are perfectly in consonance with the provisions of the Act, 1976 in case any interference is made thereunder then it will defeat the very purpose and object of the Act, 1976.

4. I have given my thoughtful consideration to the submissions made by the learned counsel for the parties.

5. This Court under Article 227 of the Constitution has a very limited power of judicial review. Interference in the order of the Tribunal could have been made by this Court only where it is found that the order is without jurisdiction or the finding recorded by the authorities is perverse or the authorities have misread the evidence. The Apex Court in the case of Laxmikant Revachand Bhojwani vs. Pratapsingh Mohansingh Pardesh reported in 1995 (6) SCC 576 observed that this Court under Article 227 cannot assume unlimited prerogative to correct all species of hardships or wrong decisions. The power under Article 227 of the Constitution must be restricted to cases of grave dereliction of duties and flagrant abuse of fundamental principles of law or justice where grave injustice would be done unless this Court interferes. The Act, 1976, is a special legislation enacted to give relief to rural debtors from the debt of creditors. The legislature has in its wisdom not provided any appeal or revision to this Court against the order of the appellate authority made under the said Act. The object is to give finality to the decision of the appellate authority. So if this is the intention of the legislature then while dealing with this special

civil application under Article 227 of the Constitution the Court should take all the care that the object and purpose of the Act is fulfilled and the same is not defeated on technical grounds.

6. The appellate authority has considered the contention raised by the learned counsel for the petitioner that in view of the civil court decree the proceedings are barred. It is true that the civil court has passed the decree, which decree has been executed and possession of the land has been handed over to the debtor. The petitioner has not raised this objection in the civil suit. The learned counsel for the petitioner does not dispute that the suit has been decreed after the Act, 1976 has come into force. So in the matter of Rural debt, the civil court may not have jurisdiction, but both the parties have not brought this fact to the notice of the civil court, and as such, the decree has been passed. Otherwise, the civil court would not have jurisdiction. So the decree which has been passed after coming into force of the Act, 1976, will not take over the jurisdiction of the authority to examine the matter with reference to the provisions of the Act, 1976. It is true that the respondent has also not brought this fact to the notice of the civil court, but it is hardly of any substance because the petitioner is equally at fault. So also the court should have taken the care of this fact but merely because decree has been passed by the civil court, it cannot be held in the facts of this case that the jurisdiction of the authorities under the Act, 1976 is barred. The civil court has not considered the matter with reference to the provisions of the Act, 1976 which is a special Act enacted for the benefit of the class of persons and the respondent is of the class to which that Act is applicable. So it cannot be said that both the authorities acted arbitrarily or without jurisdiction.

7. In the result, this special civil application fails and the same is dismissed. Rule discharged. Interim relief, if any, granted by this Court stands vacated.

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